

REMARKS

The amendments offered above are to correct editorial oversights in the dependency of certain claims. No new matter has been added.

Pursuant to the Restriction Requirement imposed in the most recent Office Action, Applicants provisionally elect with traverse the claims of Species (A) for continued prosecution herein. Applicant Further provisionally elects with traverse subspecies (a) for continued prosecution herein. Claims 1, 3, 5-7, 10-16, 18-20, 24-29, 32-40 and 42, as amended above, read on species (A), subspecies (a) as they are defined.

Claims 1, 3-7, 12-16, 18-22 and 24-42 are present in the above-captioned application and have been subjected to restriction under 35 U.S.C. § 121. Specifically, the Official Action avers that the application includes two patentably distinct species:

(A) An LCD device with a multi-domain alignment layer having a curved surface and a columnar spacer disposed approximately at a center of the pixel, wherein an insulating film is disposed between an orientation layer and a pixel electrode (Figs. 1-3); and

(B) An LCD device with a multi-domain alignment layer having a curved surface and a columnar spacer disposed approximately at a center of the pixel, wherein the an orientation layer is disposed directly on a pixel electrode (Figs. 4, 5).

The Examiner further alleges that each group includes two patentably distinct subspecies:

(a) The curved surface having a recess or concave shape and the columnar spacer having a cross-section decreased from the orientation layer (Figs. 1, 4); and

(b) The curved surface having a convex shape and the columnar spacer having a cross-section increased from the orientation layer (Figs. 3, 5).

It is the Examiner's position that the inventions listed as Species (A) and (B), and subspecies (a) and (b) are patentably distinct from each other.

In response to the Examiner's requirement for restriction, Applicants provisionally elect with traverse to prosecute the subject matter of Species (A), subspecies (a), for continued prosecution herein. Claims 1, 3, 5-7, 10-16, 18-20, 24-29, 32-40 and 42 read on species (A), subspecies (a), as it is defined. Applicants respectfully submit that Claims 1, 15 and 18 are generic within species (A) to both subspecies. Further, Applicant respectfully submits that Claims 5-7, 10, 12-14, 16 and 24-42 are generic as to species (A) and (B), because none of these claims explicitly recite the orientation layer "directly" on the pixel electrode. Claims 10, 11, 12, 28 and 32 cross subspecies (a) and (b) to read in part on both subspecies. However, Applicants reserve the right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected claims in this application.

Pursuant to 37 C.F.R. §§ 1.111 and 1.143, Applicants hereby traverse the Examiner's requirement for restriction and request reconsideration thereof in view of the following remarks.

Restriction is only proper where a search of the entire application present an undue burden on the Examiner. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." See, MPEP,

8th Ed., § 803. In this case, the subject application has already received three Office Actions on the merits. The prior art relevant to all disclosed subject matter should be developed at this point. *See*, MPEP, § 904.03. Therefore, Applicant respectfully submits that an action on all claims present presents no undue burden, and that the Restriction Requirement be withdrawn.

Applicants respectfully traverse the indication that no claim is generic. Even assuming, *arguendo*, that distinct species are present, Claims 5-7, 10, 12-14, 16 and 24-42 do not recite the alleged defining characteristic of either species. They recite neither an insulating layer between the orientation film and the pixel electrode, nor the orientation layer “directly” on the pixel electrode. These claims include and open (“comprising”) structure, and do not exclude an interstitial layer between the orientation film and the pixel electrode. Therefore, these claims must be generic to both species.

Moreover, Species must be defined by mutually exclusive characteristics. The courts have held that “[T]he *addition* of a limitation to a claim, as distinguished from the substitution of a limitation, can never result in a claim to a different species, since species claims must be mutually exclusive in scope” *In re Muller*, 417 F.2d 1387, 163 USPQ 641 (CCPA 1969) (emphasis in original). *See also*, MPEP, § 806.04(f). The absence of a positive recitation of a feature in an open structured claim (“comprising”), does not preclude additional features. Moreover, Claim 37 specifically claims aspects of both subspecies (a) and (b). Therefore, the subspecies are not mutually exclusive.

In view of the foregoing, an examination on the merits of the elected claims, at an early date, is earnestly solicited. However, it is respectfully urged that the Restriction Requirement is improper and poorly taken, and should therefore be reconsidered and withdrawn. An action on the merits with respect to all the claims is kindly solicited.

Respectfully submitted,



David J. Torrente
Registration No. 49,099

SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343

DJT:eg

FAX RECEIVED
JUL 07 2003
TECHNOLOGY CENTER 2800